

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

HEALTH REPUBLIC INSURANCE
COMPANY,

Plaintiff,
on behalf of itself and all others
similarly situated,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

Case No. 16-259C

Judge Davis

**JOINT MOTION TO DIVIDE DISPUTE SUBCLASS INTO TWO SUBCLASSES AND
STIPULATION FOR ENTRY OF PARTIAL JUDGMENT AS TO ONE SUBCLASS**

Pursuant to RCFC 23(c)(5), the Dispute Subclass and the United States move the Court to divide Dispute Subclass member Freelancers Co-Op of New Jersey, Inc. (“Freelancers”) into a separate subclass (“Freelancers Subclass”) and certify that the proposed Freelancers Subclass satisfies the requirements described in RCFC 23(a)-(b). As set forth below, the Parties further stipulate to entry of judgment as to the Freelancers Subclass.

STATUTORY BACKGROUND

The Patient Protection and Affordable Care Act, Pub. L. No. 111-148 (2010), 124 Stat. 119, and the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152 (2010), 124 Stat. 1029 (collectively, the “ACA”) created several programs under which the Parties’ respective claims arise.

The ACA created three interrelated risk mitigation programs. Specifically, section 1341 (42 U.S.C. § 18061) created the reinsurance program; section 1342 (42 U.S.C. § 18062) created the risk corridors program; and section 1343 (42 U.S.C. § 18063) created the risk adjustment

program. Section 1322 of the ACA (42 U.S.C. § 18042), relates to the Consumer Operated and Oriented Plan program, under which the United States provided start-up and solvency loans to certain insurers. Section 1412 (42 U.S.C. § 18082) authorizes advance payment of premium tax credits (“APTCs”) to insurers. Section 1402 (42 U.S.C. § 18071) authorizes cost-sharing reductions (“CSRs”). Sections 1343 (42 U.S.C. § 18063), 1311 (42 U.S.C. § 18031), and 1321 (42 U.S.C. § 18041) of the ACA authorize the United States to collect user fees for its operation of the federally-facilitated exchange (“FFE”) and the risk adjustment program.

THE PARTIES’ CLAIMS

On February 24, 2016, Health Republic Insurance Company (“Health Republic”) filed the Complaint on behalf of itself and others similarly situated, seeking risk corridors payments under section 1342 of the ACA for benefit years 2014 and 2015. The Complaint alleges a single count for violation of section 1342.

On January 3, 2017, the Court certified the following class (the “Class”):

All persons or entities offering Qualified Health Plans under the Patient Protection and Affordable Care Act in the 2014 and 2015 benefit years, and whose allowable costs in either the 2014 or 2015 benefit years, as calculated by the Centers for Medicare and Medicaid Services, were more than 103 percent of their target amounts (as those terms are defined in the Patient Protection and Affordable Care Act). Excluded from the Class are the Defendant and its members, agencies, divisions, departments, and employees.

Docket No. 30. In the same order, the Court appointed Health Republic as the class representative and appointed Quinn Emanuel Urquhart & Sullivan, LLP as lead counsel for the Class. Ultimately, 153 issuers opted into the Class, including Freelancers.

On April 27, 2020, the United States Supreme Court held that section 1342 of the ACA “created an obligation neither contingent on nor limited by the availability of appropriations or other funds,” that the obligation was not affected by subsequently-enacted legislation, and that the

“petitioners may seek to collect payment through a damages action in the Court of Federal Claims.” *Maine Community Health Options v. United States*, 140 S. Ct. 1308, 1323, 1331 (2020). The Parties agree that the Supreme Court’s decision in *Maine Community Health Options* entitles the Class members to receive payment from the United States under ACA section 1342 for risk corridors benefit years 2014 and 2015.

The Court subsequently divided the Class into three subclasses: (1) the Non-Dispute Subclass, for whom the Court entered judgment on July 23, 2020; (2) the Dispute Subclass, which currently includes Freelancers; and (3) the Arches Subclass. Docket No. 82. The Court approved the Dispute Subclass with the following definition:

All approved class members offering Qualified Health Plans under the Patient Protection and Affordable Care Act in the 2014 and 2015 benefit years, whose allowable costs in either the 2014 or 2015 benefit years, as calculated by the Centers for Medicare & Medicaid Services, were more than 103 percent of their target amounts (as those terms are defined in the Patient Protection and Affordable Care Act), and that dispute the amount due to the entity under Section 1342 of the Affordable Care Act, and/or dispute the government’s right to offset debts against a judgment pursuant to Section 1342, and/or dispute the extent of any such offset.

Id.

THE DISPUTE SUBCLASS SHOULD BE DIVIDED INTO TWO SUBCLASSES

After the Court’s order creating three subclasses, Freelancers and the United States agreed to a resolution of Freelancers’ claim against the United States under ACA section 1342 for risk corridors benefit years 2014 and 2015.¹ The Parties agree that there is no reason to delay judgment in favor of Freelancers. Accordingly, the Parties request that the Dispute Subclass “be divided into subclasses that are each treated as a class under” RCFC 23(c)(5). Specifically, the Parties

¹ The Dispute Subclass has a pending motion to dismiss the United States’ counterclaim. Docket No. 103. In that motion, the Dispute Subclass noted that “Freelancers and the government have agreed in principle to resolve their dispute, and the parties intend to file a motion to place Freelancers in a separate subclass.” *Id.* at n.1.

request to move Freelancers into a newly created “Freelancers Subclass,” defined as follows:

All approved class members offering Qualified Health Plans under the Patient Protection and Affordable Care Act in the 2014 and 2015 benefit years, whose allowable costs in either the 2014 or 2015 benefit years, as calculated by the Centers for Medicare & Medicaid Services, were more than 103 percent of their target amounts (as those terms are defined in the Patient Protection and Affordable Care Act), and who were previously members of the Dispute Subclass, but have since agreed to a resolution of their dispute with the government with respect to this litigation.

Freelancers has agreed to serve as the class representative for the Freelancers Subclass.

**STIPULATION FOR ENTRY OF JUDGMENT
AS TO THE FREELANCERS SUBCLASS**

The Parties stipulate that the Freelancers Subclass is entitled to payment from the United States under the risk corridors program for the 2014 and 2015 benefit years in the amount of \$23,301,140.37. Accordingly, the Parties jointly request that the Court enter judgment in favor of the Freelancers Subclass in the amount of \$23,301,140.37.

Upon entry of final judgment and receipt of payment, Freelancers (HIOS No. 10191), and any and all of Freelancers’ affiliated entities, release the United States, its agencies, instrumentalities, officers, agents, employees, and servants, from all claims (including attorney fees, costs, and expenses of every kind and however denominated) that Freelancers, and any and all of Freelancers’ affiliated entities, have asserted, could have asserted, or may assert in the future against the United States, its agencies, instrumentalities, officers, agents, employees, and servants, arising under section 1342 of the ACA for benefit years 2014 and 2015.

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